

HOUSE No. 3189

The Commonwealth of Massachusetts

PRESENTED BY:

Geraldine Creedon

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to roadway re-openings and safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Geraldine Creedon	11th Plymouth
Louis L. Kafka	8th Norfolk
Christine E. Canavan	10th Plymouth
Michael Brady	9th Plymouth
Denise Provost	27th Middlesex
Paul McMurtry	11th Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO ROADWAY RE-OPENINGS AND SAFETY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

The General Laws are hereby amended by inserting after chapter 84 the following chapter:

Chapter 84A

Roadway Re-openings Safety

SECTION 1. The department of highway shall conduct construction activities and ensure development of project plans for state roads and bridges in coordination with municipal agencies to achieve the following:-

Ensure the development of project plans and construction timelines.

Communicate with all project participants, including investor owned utilities, to ensure that all are aware of project timelines and will perform their respective functions within the prescribed time frame.

Develop a form that presents road closing and detour related information to include, but not be limited to, traffic volumes re-routed and detour length to determine incremental mileage, fuel consumed and green house gas emissions resulting from delayed road openings.

In the event of a delayed road re-opening and that a completed copy of the form detailed above is provided to the applicable regulatory authority.

Advise the applicable regulatory authority at the end of each delayed roadway re-opening and provide that regulatory authority with a completed form detailing the cumulative impacts resulting from that project delay.

Coordinate with the State Police to cite for non-relocated public utility assets that pose a safety hazard in state roadways at the end of road construction projects citations shall be sent to the utility and a copy to

the appropriate agency. Assist local agencies in developing a project timeline and completion of the above form for road closings within their jurisdiction. In the event of a delayed road re-opening in a local jurisdiction, provide a complete property of the form to the appropriate regulatory authority. At the end of a delayed road re-opening in a local jurisdiction, provide the regulatory authority with a completed form detailing the cumulative impacts resulting from the project delay.

SECTION 2. Municipal Public Works' Departments shall have the responsibility to ensure roads within their jurisdiction are operable and in safe conditions. Such departments shall be responsible for, but not limited to, the following:-

Ensure the development of project plans and construction timelines.

Assist the department of highways to complete their form for each road closure within its jurisdiction as part of the initial project planning process.

Communicate with all project participants, including public utilities, to ensure that all are aware of the project timelines and will perform their respective functions within the prescribed time frame.

In the event of a delayed road re-opening due to a public utility, provide information on each such delayed road re-opening to the department of highways.

Advise the department of highways of the end of each delayed road re-opening.

Coordinate with local police to cite for non-relocated public utility assets that pose a safety hazard in municipally operated roadways at the end of road construction projects. Municipal citations will be sent to the attention of the traffic coordinator for that utility and a copy to the concerned regulatory authority.

The department of public works may contact the utility for assistance in resolving right-of-way issues with the utility. If the right-of-way issue is not resolved within 30 days from the date of notice, the department of public works or such other municipal agency with responsibility over the issue, may contact the appropriate regulatory authority for assistance in resolving the issue.

SECTION 3. The department of public utilities shall perform the following functions:-

Ensure that all investor owned public utilities always maintain designated traffic coordinators and contact information, including a full address, phone, fax, and email address. This database shall be reality available on the DPU website and shall be maintained at minimum, monthly.

Shall review the job/position description of the traffic coordinators submitted by each investor owned utility and ensure that it complies with the intent of this law and shall advise each utility of any discrepancies in the content of the job/position.

Shall maintain a file of current job/position descriptions for the traffic coordinator for each investor owned public utility.

Reasonable and just expenses associated with establishment and operation of a utility traffic coordinator position within each utility shall be allowable for ratemaking purposes.

Maintain information files on all delays in public roadway openings and public roadway safety related issues and accumulate those files for each investor owned utility from the time of enactment of this law through the completion of the next rate case for that utility. Subsequently, a traffic file will be maintained for each investor owned public utility during the time interval between rate cases for each such utility.

The commissioner of the DPU shall review and consider the traffic related delays and safety violations will be considered to be a positive factor in rate making determination for that utility.

Shall ensure that no municipal public roadway safety related fines or other such civil penalties are not passed onto the ratepayers of that utility, but shall be for the account of the share holders of that utility. Municipal public roadway safety related fines or other such civil penalties incorrectly included in rate base shall be removed and the utility earnings reduced by no more than 10 times the amount improperly accounted for.

Shall prepare an annual report on all utility related delays on roadway re-openings and roadway safety issues. This report shall also include information on incremental distances driven, fuel consumed, and greenhouse gas emissions due to delayed roadway re-openings for each utility. The report should be prepared annually for each calendar year and presented to the undersecretary of energy within the Executive Office of Energy and Environmental Affairs (EOEEA) not later than the end of the first calendar quarter.

SECTION 4. The department of telecommunications and cable shall perform the following functions:

Ensure that all investor owned public utilities always maintain a designated traffic coordinator.

Maintain an up-to-date database of all public utility traffic coordinators and contact information, including a full address, phone, fax, and email address. This data base shall be readily available on the DTC website and shall be maintained at minimum, monthly.

The DTC shall review the job/position description of the traffic coordinators submitted by each investor owned utility and ensure that it complies with the intent of this law and shall advise each utility of discrepancies in the content of the job/position description.

The DTC shall maintain a file of current job/position descriptions for the traffic coordinator for each investor owned public utility.

Reasonable and just expenses associated with the establishment and operation of a utility traffic coordinator position within each utility shall be allowable for ratemaking purposes.

Maintain information filed on all delays in public roadway openings and public roadway safety related issues and accumulate those files for each investor owned utility from the time of enactment of this law through the completion of the next rate case for that utility. Subsequently, a traffic file will be maintained for each investor owned public utility during the time interval between rate cases for each such utility.

The commissioners of the DTC shall review and consider the traffic related delays and safety issues in each such utilities rate making case. The absence of or infrequent reopening delays and traffic safety violations will be considered a positive factor in rate making determination for that utility.

The DTC shall ensure that no municipal public roadway safety related fines or other such civil penalties are not passed on to the ratepayers of that utility, but shall be for the account of the shareholders of that utility. Municipal public roadway safety related fines or other such civil penalties incorrectly included in rate base shall be removed and the utility earnings reduced by no more than 10 times the amount improperly accounted for.

The DTC shall prepare an annual report on all utility related delays on roadway re-openings and roadway safety issues. This report shall also include information on incremental distances driven, fuel consumed, and greenhouse gas emissions due to delayed roadway re-openings for each utility. The report should be prepared annually for each calendar year and presented to the undersecretary the office of consumer affairs and business regulation not later than the end of the first calendar quarter.

SECTION 5. Public utilities shall have the following responsibilities.

They shall appoint a traffic coordinator and provide the full contact information, including a full address, phone, fax, and email address to the responsible regulatory authority within the commonwealth. If the traffic coordinator is replaced, the utility shall ensure that the contact information is fully updated at the time of the personnel change.

The traffic coordinator shall be the designated representative, who will be responsible within that utility to perform these and other functions such as, but not limited to, the following:

Maintain the schedules and information on each road project that may require the relocation, removal or replacement or other action on the part of the utility to permit the timely and safe re-opening of public roadways. Travel to roadway work sites or to other locations to meet with the department of highways and local departments of public works as required to effectively understand and coordinate roadway projects.

Coordinate the assignment of utility workers to work on utility assets to ensure the timely reopening and/or safe operation of public roadways in line with each road construction time table.

The event that utility assets are preventing a roadway reopening and/or posing a roadway safety hazard and are cited and fees or civil penalties assessed, the traffic coordinator shall be delegated the authority to effect payment of such penalty to the proper authority assessing such penalty. In the event of delays in paying civil penalties, the traffic coordinator shall have the delegated the authority and assigned responsibility to effect payment for late payment penalties.

The traffic coordinator shall assist local departments of public works to resolve right-of-way issues in a timely manner.

The traffic coordinator shall ensure that no civil penalties or late payment fees are included as reimbursable expenses to the ratepayers of that utility and shall ensure that such fees and penalties are for the account of the shareholders.

The traffic coordinator shall report to a senior officer of the utility who is responsible for utility operations.

The job/position description for the traffic coordinator shall be prepared and a copy shall be sent to the applicable commonwealth regulatory authority, which shall review each job description to ensure that each job/position description corresponds with the intent and provisions of this law. The utility will consider comments from the regulatory authority and modify the job/position description accordingly and provide a revised job/position for the regulatory body to maintain on file.

Just and reasonable expenses associated with the position and function of the traffic coordinator shall be allowable expenses and recoverable from ratepayer revenue.

SECTION 6. Cities and towns shall have the authority to perform the following functions and they may cite a public utility with a roadway safety violation if they have public utility assets in an open public roadway. Safety fines shall be limited to \$100 per utility asset per day. They may cite a public utility with roadway safety violations if utility assets in a roadway prevent it from being re-opened at the completion of a roadway construction project, and such fines shall be limited to \$250 per utility asset per day city and town citations shall be prepared in the name of the utility and sent to the attention of the traffic coordinator.

If the utility has been notified of roadway construction plans and elects not to relocate utility assets within the roadway construction timeframe, this law shall hold the utility responsible for their decision not to relocate utility assets.

If the utility appeals any safety violation fines and the fines are upheld in court, the utility shall compensate that municipality for legal fees charged to represent that municipality, fully weighted salary and benefit costs of the municipal authorities to prepare the appeal and attend the appeal and travel expense to and from the court appeal. A statement of total costs incurred shall be prepared by that municipality and sent to the traffic coordinator for the concerned utility for reimbursement.

Late payment of municipal fines or reimbursement of appeal costs shall bear a late payment fee if not paid within thirty days from the date sent. Unpaid amounts shall bear a late payment rate no greater than the fee charged to municipal residents for the late payment of real estate taxes. Late payment fees shall bear the late payment fee rate from the time the notice is sent until the date the total payment due is received.